ABDUL RAHMAN MOHIDIN PICHAI

v.

THE ATTORNEY-GENERAL, SINGAPORE

HIGH COURT, SINGAPORE
FA CHUA J
[S. 394/84]
20 MAY 1986

TORT: *Personal injury - Whether in the course of duty - Liability of Government.*

STATUTORY INTERPRETATION: *Government Proceedings Act (Cap. 21), s. 14(4) - Liability of Government to pay compensation - Tortious public officer - Protection under the Act - Section 14(1), (2) - Certificate under s. 14(1)(b) - Entitlement to award.*

The plaintiff in this case was claiming for damages for personal injury suffered by him as a result of a collision with a government lorry which was driven by an employee of the Government. At the time of the accident, the plaintiff was enlisted full time in the National Service. The defendant entered appearance on the suit commenced by the plaintiff and on 9 February 1985 the defendant paid the sum of $18,000 into Court in satisfaction of the plaintiff's cause of action. Earlier on, the defendant had admitted liability and had asked the plaintiff to enter interlocutory judgment on 24 February 1984. No defence was filed and interlocutory judgment was entered against the defendant with damages to be assessed on 29 February 1984.

In March 1985, the plaintiff was informed by the Singapore Armed Forces (SAF) that the SAF had decided to award him a lump sum disability compensation for the amount of $15,720.41 under the SAF Pensions (Amendment) Regulations 1981. On 27 September 1985, the defendant, by way of summons-in-chambers, applied for, *inter alia*, an order that the interlocutory judgment entered on 29 February 1984 be set aside, that the sum of $18,000 paid into Court by the defendant on 9 February 1985 be paid out to the defendant and that there be no order as to the costs of the application. The defendant's contention was that the Government had a defence under s. 14(4) of the Government Proceedings Act. The plaintiff's argument was that s. 14(4) would only protect the tortious public officer if ss. 14(1) and (2) were satisfied.

Held:

[1] In the instant case, the plaintiff was not in fact on duty at the material time nor could he be deemed to have been on duty because he was not then on some land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces.

[2] The certificate issued under s. 14(1)(b) erroneously stated that the plaintiff sustained the injuries "whilst on duty".

[3] The issue of the certificate is a pre-condition to any entitlement to an award. It is clear that the only purpose of the issue of the certificate was for the Government to claim immunity from suit. In the instant case it was issued 5 months after the decision to make the award was made. The certificate is, therefore, a nullity.

[Appeal allowed with costs.]

Case referred to:

Bell v. Secretary of State for Defence [1985] 3 All ER 661

Legislation referred to:
Crown Proceedings Act 1947 [UK], ss. 10, (1), (1)(a), (b)
Government Proceedings Act [Sing], ss. 14, (1)(b), (2), (4)
Law Reform (Miscellaneous Provisions) Act 1934 [UK], s. 1
SAF Pensions Regulations 1978, reg. 2

For the plaintiff - M.A. Valibhoy; M/s. Murphy & Dunbar
For the defendant - Charles Lim

JUDGMENT

FA Chua J:

This is an appeal by the plaintiff against the decision of the Assistant Registrar ordering that:

(1) The interlocutory judgment entered on 29 February 1984 be set aside;

(2) The sum of $18,000 paid into Court by the defendant on 9 February 1985 and accrued interest thereon be paid out to the defendant;

(3) There be no order as to the costs of application.

The plaintiff's claim is for damages for personal injuries suffered by him as a result of a collision at Vernon Park on 5 February 1982, with a Ministry of Environment lorry No. YA 4059D driven by one Lee Kong, an employee of the government. The action was commenced on 19 January 1984.

On 7 February 1984, the defendant entered appearance. On 9 February 1985, the defendant paid the sum of $18,000 into Court in satisfaction of the plaintiff's cause of action. On 24 February 1984, the defendant wrote to the plaintiff's then solicitors stating that the defendant admitted liability and asked that plaintiff proceed to enter interlocutory judgment with damages to be assessed. No defence was filed and interlocutory judgment was entered against the defendant with damages to be assessed on 29 February 1984. Assessment of damages was fixed for mention on 23 February 1985.

In March 1985 the plaintiff was informed by the Singapore Armed Forces (SAF) that the SAF had decided to award him compensation. On 3 May 1985, the SAF paid to the plaintiff a lump sum disability compensation of $15,720.41 under the SAF Pensions (Amendment) Regulations, 1981, for the disability suffered by the plaintiff as a result of the accident at Vernon Park on 5 February 1982.

On 27 September 1985, the defendant applied by summons-in-chambers for, *inter alia*, the interlocutory judgment to be set aside and on 7 November 1985, the Assistant Registrar made an order in the terms prayed for.

The plaintiff was enlisted in the full-time National Service from the period 26 June 1980, to 25 June 1982. In February 1982 his duty hours on weekdays were from 7.45 a.m. to 5 p.m.

On 5 February 1982, the plaintiff finished the day's duty at 5 p.m. and thereafter immediately changed into civilian clothing and left Mount Vernon Camp. While walking along Vernon Park, which is a public road just outside the Camp, the accident took place.

It is the contention of the defendant that the Government in this case has a defence under s. 14(4) of the Government Proceedings Act (Cap. 21) (the Act) which provides that:

> No act or omission of a public officer shall subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the forces being a thing as to which the conditions mentioned in subsection (1) or (2) are satisfied.

It is submitted that since the public officer the driver Lee Kong, is not liable, the Government is not liable as its liability is vicarious.

The contention of the plaintiff is that s. 14(4) of the Act will protect the tortious public officer only if the conditions is Subsections (1) or (2) of s. 14 are satisfied.

Section 14 provides as follows:

> (1) Nothing done or omitted to be done by a member of the forces while on duty shall subject either him or the Government to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the forces if-
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> (a) at the time when that thing is suffered by that other person he is either on duty as a member of the forces or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the forces, and
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> (b) the Minister responsible for finance certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under any written law relating to the disablement or death of members of the force of which he is a member:
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> Provided that this subsection shall not exempt a member of the said forces from liability in Tort in any case in which the Court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

It is submitted that s. 14 of the Act, which are provisions relating to the armed forces is not applicable in this case as at the time of the accident the plaintiff was not on duty, he was not on land used for the purposes of the forces but on a public road, and his injuries were not attributable to service, as required by s. 14(1). It is also contended that the certificate issued by the Minister responsible for finance under s. 14(1)(b) was a nullity. It is submitted that the issue of such a certificate is a condition precedent to an award. In this case the certificate was issued on 15 August 1985, after the decision to award compensation was made and after the payment of compensation and that the only purpose of the Minister responsible for finance in issuing the certificate was to claim immunity from suit.

Regulation 2 of the SAF Pensions Regulations, 1978, defines "injuries received in and which are attributable to service" as including injuries received in the following circumstances:

> (a) Whilst on a journey necessary to enable a member to report for service or to return home after service; or
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> (b) in consequence of some act lawfully performed in the discharge of the member's duties;

The plaintiff submits that injuries received on his journey home after service are attributable to service but it does not mean that he was on duty.

In support of his arguments Counsel for the plaintiff relied on the case of *Bell v. Secretary of State for Defence* [1985] 3 All ER 661. In that case, the deceased, who was a serviceman stationed in West Germany, sustained head injuries during horseplay in barracks. He was transferred from the army medical reception centre to a local civilian hospital, but the army doctor failed to provide the hospital with accurate notes of the deceased's injuries with the

result that there was a significant delay before the civilian doctors could make an accurate diagnosis. The deceased subsequently died from his injuries. The plaintiff, the deceased's father, suing as administrator of his estate, brought an action for damages against the Secretary of State for Defence under the Law Reform (Miscellaneous Provisions) Act 1934, s. 1 alleging, *inter alia*, that the army doctor had been negligent in failing to provide proper medical notes to the civilian hospital and that that had prevented the deceased receiving proper treatment in time. The Secretary of State claimed immunity from suit pursuant to s. 10(1) of the Crown Proceedings Act 1947, under which nothing done or omitted to be done by a member of the armed forces while on duty could subject the Crown to liability in Tort for causing the death of a person while he was a member of the armed forces if (by s. 10(1)(a)) at the time the victim was "either on duty....or (was), though not on duty as such, on any land (or) premises ....used for the purposes of the armed forces" and if (by s. 10(1) (b)) the Secretary of State certified that the serviceman's death was, for the purposes of "entitlement to an award" under the provisions relating to the disablement or death of members of the armed forces, attributable to his military service. The Secretary of State subsequently issued a certificate pursuant to s. 10(1)(b).

The question whether s. 10 gave immunity to the Secretary of State against being vicariously liable for the negligence of the army medical staff was tried as a preliminary issue. The Judge upheld the Secretary of State's claim to immunity and the plaintiff appealed, contending (i) that the certificate issued under s. 10(1)(b) was a nullity because there was no one who was entitled to receive an award as the result of the deceased's death, since there was no one who was dependent on him and therefore the only purpose of the Secretary of State in issuing the certificate was to claim immunity from suit, and (ii) that for the purposes of s. 10(1)(a) the army doctor's negligence had occurred when the deceased was not on army land but at the civilian hospital.

It was held:

(1) On the true construction of s. 10(1)(b) of the 1947 Act the Secretary of State was entitled to issue a certificate that a serviceman's death was attributable to his service for the purposes of an "entitlement to an award" even though at the time when the certificate was issued it was clear that there was no one entitled to receive such an award and the only effect of the certificate was to enable the Secretary of State to claim immunity from suit because the certificate was merely declaratory or the fact that the death was attributable to service and it did not follow that an award would be made if a certificate was issued. (ctd)

(2) (Sir John Donaldson M.R. dissenting) The injury suffered by the deceased, i.e. the failure by the army doctor to give the civilian hospital accurate information about the deceased, had occurred at the civilian hospital and not on Crown land and accordingly, the Secretary of State was not entitled to claim immunity because under s. 10(1)(a) such immunity was restricted to an injury suffered by a serviceman while on duty or while on Crown land. The plaintiff's appeal would therefore be allowed.

Our s. 14(1) of the Government Proceedings Act (Cap. 21) is similar to s. 10(1) of the Crown Proceedings Act 1947.

In dealing with the extent of the immunity under s. 10(1), Sir John Donaldson M.R. said (p. 665):

> The broad concept underlying the section is simple enough. Where one serviceman, who is on duty, negligently kills or injures another serviceman, who is also on duty, any compensation shall be provided under the service pension scheme contained in the Order in Council and not under the common law. Difficulties can, however, arise when the serviceman who was killed or injured was not in fact on duty at the relevant time, but is, in effect, deemed to have been on duty because he was then on some land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown. The difficulty lies in determining what is the relevant time.
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> In the instant appeal Trooper Bell was not in fact on duty at any material time, but he was deemed to be on duty at all times until he was taken from the army vehicle into the German civilian hospital. Thereafter he was neither on duty nor deemed to be on duty. Accordingly it becomes necessary to consider whether the relevant time was before or after his arrival at the hospital. This involves construing para (a) in s. 10(1).

In the instant appeal, the plaintiff was not in fact on duty at the material time nor could he be deemed to have been on duty because he was then not on some land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces.

The certificate issued under s. 14(1)(b) erroneously stated that the plaintiff sustained the injuries "whilst on duty". The issue of the certificate is a pre-condition to any entitlement to an award. It is clear that the only purpose of the issue of the certificate was for the Government to claim immunity from suit. In the instant case it was issued 5 months after the decision to make the award was made. In my view the certificate is a nullity.

In the result the appeal is allowed with costs.

Also found at [1986] 2 CLJ 171